

HOUSE No. 4054

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 13, 2009.

The committee on Ways and Means, to whom was referred the Bill providing responsible reforms in the pension system (Senate, No. 2026, amended), reports recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the accompanying text (House, No. 4054).

For the committee,

CHARLES A. MURPHY.

Text of an amendment recommended by the committee on Ways and Means to the Senate Bill providing responsible reforms in the pension system. (Senate, No. 2026, amended).

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine.

By striking out all after the enacting clause and inserting in place thereof the following:

- 1 “SECTION 1. Section 1 of chapter 32 of the General Laws, as
2 appearing in the 2006 Official Edition is hereby amended by inserting
3 after the words “forty-five”, in line 399, the following words:- through
4 June 30, 2009
- 5 SECTION 2. Said section 1 of said chapter 32 of the General Laws,
6 as so appearing, is hereby further amended by striking out, in line 433,
7 the words “ninety H.” and inserting in place thereof the following
8 words:-
- 9 “90H. Regular compensation” during any period subsequent to June
10 30, 2009 compensation received exclusively as wages by an employee
11 for services performed in the course of employment for his employer.
- 12 SECTION 3. Said section 1 of said chapter 32 of the General Laws,
13 as so appearing, is hereby further amended by inserting at the end thereof
14 the following definition:-
- 15 “Wages” the base salary or other base compensation of an employee
16 paid directly to that employee for employment by an employer plus
17 amounts paid as educational incentives, amounts paid for length of
18 service, amounts paid as premiums for shift differentials, amounts paid
19 as cost-of-living bonuses or cost-of-living pay adjustments, and as
20 contained in any applicable collective bargaining agreement or individual
21 contract for employment. The term wages shall not include, without
22 limitation, overtime, amounts paid for additional services or for work
23 beyond the normal work year, commissions, bonuses other than cost-of-
24 living bonuses, amounts derived from any salary enhancements or salary
25 augmentation plans of any kind, temporary or ad hoc payments or
26 increases to base salary, indirect, in-kind or any payments for such items
27 as housing, lodging, travel, annuities or other retirement benefits, welfare
28 benefits, workers’ compensation benefits, job-related expense payments,
29 automobile usage, insurance premiums, dependent care assistance,
30 payment in lieu of or for unused vacation or sick leave, or the payment

31 for termination, severance, dismissal, or any amounts paid as premiums
32 for working holidays, except as authorized by law, any amounts paid as
33 early retirement incentives or any other payment made as a result of the
34 employer having knowledge of the member's retirement, tuition or any
35 other fringe benefits, payments in kind and all payments in any medium
36 other than payment received by an individual from his employing unit
37 for services rendered to such employing unit, shall not, regardless of
38 federal taxability, be considered regular compensation.

39 SECTION 4. Section 4 of said chapter 32 of the General Laws, as so
40 appearing, is hereby amended by striking out, in lines 5 to 7, inclusive, as
41 so appearing, the words:- "that he shall be credited with a year of
42 creditable service for each calendar year during which he served as an
43 elected official; and provided, further,"

44 SECTION 5. Subdivision (1) of said section 4 of said chapter 32 of
45 the General Laws, as so appearing, is hereby amended by striking out
46 paragraphs (o) and (o½) and inserting in place thereof the following
47 paragraph:-

48 (o) The service of any state, county or municipal employee first
49 employed in a position receiving compensation of less than \$5,000 shall
50 not constitute creditable service for purposes of this chapter.

51 SECTION 6. Subdivision (2) of section 5 of said chapter 32 of the
52 General Laws, as so appearing, is hereby amended by inserting at the end
53 thereof the following paragraph:-

54 (e) A person who has been a member of 2 or more systems, and who,
55 on or after January 1, 2010, has received regular compensation from 2 or
56 more governmental units concurrently, shall, upon retirement, receive a
57 superannuation retirement allowance to become effective on the date of
58 retirement that is equal to the sum of the benefits calculated pursuant to
59 this section as though the member were retiring solely from each system;
60 provided, however, that this paragraph shall not apply to a member who
61 has received part-time creditable service in 1 or more systems; and
62 provided further that, notwithstanding paragraph (c) of subdivision (8) of
63 section 3, each system shall pay the superannuation retirement allowance
64 attributable to membership in that system to the member.

65 SECTION 7. Section 7 of said chapter 32 of the General Laws, as so
66 appearing, is hereby amended by striking out in lines 68 through 73,
67 inclusive, the words "annual rate of his regular compensation on the date
68 such injury was sustained or such hazard was undergone, or equal to
69 seventy-two per cent of the average annual rate of his regular
70 compensation for the twelve-month period for which he last received

71 regular compensation immediately preceding the date his retirement
72 allowance becomes effective, whichever is greater” and inserting in place
73 thereof the following words:- average annual rate of his regular
74 compensation for the 12 month period for which he last received regular
75 compensation immediately preceding the date his retirement allowance
76 becomes effective

77 SECTION 8. Said section 7 of said chapter 32 of the General Laws,
78 as so appearing, is hereby further amended by striking out, in lines 131
79 through 133, inclusive, the following words “the greater of the annual
80 rate of his regular compensation on the date such injury was sustained or
81 such hazard was undergone, and”

82 SECTION 9. Section 10 of said chapter 32 of the General Laws, as so
83 appearing, is hereby amended by striking out, in line 4, the words “or
84 fails of nomination or re-election,”

85 SECTION 10. Said section 10 of said chapter 32, as so appearing, is
86 hereby further amended by striking out, in lines 7 to 9, inclusive, the
87 words “or fails of nomination or re-election, or fails to become a
88 candidate for nomination or re-election,”

89 SECTION 11. Said section 10 of said chapter 32 of the General Laws,
90 as so appearing, is hereby further amended by striking out, in lines 7
91 through 9, inclusive, the words “or fails of nomination or re-election, or
92 fails to become a candidate for nomination or re-election,”

93 SECTION 12. Said section 10 of said chapter 32 of the General Laws,
94 as so appearing, is hereby further amended by striking out, in lines 50
95 through 51, inclusive, the words “fails of nomination or re-election, or”

96 SECTION 13. Said section 10 of said chapter 32 of the General Laws,
97 as so appearing, is hereby further amended by striking out, in lines 73
98 through 77, inclusive, the following words “the following circumstances
99 applies: (1) that the employee has failed of nomination or re-election, (2)
100 that the employee has failed of reappointment, (3) that the employee’s
101 office or position has been abolished, or (4) that the employee has been
102 removed or discharged from his position without moral turpitude on his
103 part.” and inserting in place thereof the following words:- (1) that the
104 employee has failed of reappointment, (2) that the employee’s office or
105 position has been abolished, or (3) that the employee has been removed
106 or discharged from his position without moral turpitude on his part.”

107 SECTION 14. Said section 10 of said chapter 32 of the General Laws,
108 as so appearing, is hereby further amended by striking out, in line 79, the
109 word “six” and inserting in place thereof the following figure:- 10

110 SECTION 15. Subsection (1) of section 11 of said chapter 32 of the
111 General Laws, as so appearing, is hereby amended by inserting at the end
112 thereof the following paragraph:-

113 (d) If a member is entitled to a return of his accumulated total
114 deductions and requests such a return from the board on the proscribed
115 form, prior to the return of such accumulated total deductions, the board
116 shall contact such member's employer to determine whether such
117 member owes an obligation to the employer under the terms of any
118 employee benefit plan, including a cafeteria plan established pursuant to
119 section 125 of Title 26 of the United States Code. If it is determined that
120 the member owes the employer under the terms of any such plan, the
121 board shall not return the accumulated total deductions until it has
122 received notice from the employer that the obligation has been satisfied.

123 SECTION 16. Chapter 32 of the General Laws is hereby amended by
124 inserting after section 12C the following new section:-

125 Section 12D. Any retirement system subject to this chapter shall pay
126 all benefits in accordance with the requirements of section 401(a)(9) of
127 the Internal Revenue Code and the regulations in effect under that
128 section, as applicable to a governmental plan as defined in section 414(d)
129 of the Internal Revenue Code.

130 SECTION 17. Section 13 of said chapter 32 of the General Laws is
131 hereby amended by inserting after the second paragraph, the following
132 new paragraph:-

133 (c) A retirement board may require any member entitled to receive a
134 retirement allowance to designate a financial institution to which shall be
135 directly deposited any payments under any annuity, pension or retirement
136 allowance.

137 SECTION 18. Section 19A of said chapter 32 of the General Laws, as
138 so appearing, is hereby amended by striking the first paragraph and
139 inserting in its place the following paragraph:- Any employee of the
140 commonwealth, a city, town, district or other member unit of a
141 retirement system who is retired under this chapter shall, upon the
142 request of the retiring authority paying such pension or retirement
143 allowance, or otherwise may, by assignment made in writing authorize
144 the retiring authority paying such pension or retirement allowance to
145 withhold each month such amount as he may designate for the payment
146 of subscriber premiums applicable to any hospitalization, medical or
147 surgical insurance in effect with a non-profit hospital and medical service
148 corporation or insurance company at the time of his retirement. In the
149 event that the amount of a retiree's pension check is insufficient to

150 accommodate the entire deduction and upon notice from the retirement
151 board, the employer for whom the retiree last worked and from whom he
152 is retired shall bill the retiree for the employee share of the premiums.

153 SECTION 19. Subsection (5) of section 20 of said chapter 32 of the
154 General Laws, as so appearing, is hereby amended by inserting at the end
155 thereof the following new paragraph:-

156 (m) A retirement board may create, designate, or approve agencies or
157 instrumentalities to provide members with information about retirement
158 planning and options and to provide retirees with information about
159 benefits and to do all other things necessary and desirable to support the
160 purposes of the retirement system.

161 SECTION 20. Said chapter 32 is hereby further amended by inserting
162 after section 22D the following new section:-

163 Section 22E. A pension impact statement shall be filed not later than
164 30 days after the effective date of any law that affects the
165 commonwealth's pension liability, as defined in section 1, by changing
166 the benefits or contributions of classes of members including, but not
167 limited to, early retirement incentive programs. The pension impact
168 statement shall be prepared or approved by the actuary of the public
169 employee retirement administration commission and shall analyze, study,
170 and evaluate the costs and the actuarial liabilities attributable to such
171 change. The actuary shall file the pension impact statement with each
172 retirement system to which any portion of the change in liability is
173 attributable and shall send a copy to the secretary of administration and
174 finance and the house and senate committees on ways and means. The
175 actuary may subsequently revise the estimates in a pension impact
176 certificate and revise the required contribution schedule it requires
177 accordingly.

178 SECTION 21. Chapter 182 of the acts of 2008 is hereby amended by
179 striking out section 111 and inserting in place thereof the following
180 section:-

181 Section 111. There is hereby established a special commission to
182 study the Massachusetts contributory retirement systems. The
183 commission shall consist of 17 members: 1 of whom shall be the
184 secretary of administration and finance, or her designee; 1 of whom shall
185 be the auditor of the commonwealth, or his designee; 1 of whom shall be
186 the executive director of the public employee retirement administration
187 commission, or his designee; 1 of whom shall be the executive director
188 of the state retirement board, or his designee; 1 of whom shall be the
189 executive director of the teachers' retirement board, or her designee; 3 of

190 whom shall be members of the house of representatives, 2 of whom shall
191 be appointed by the speaker of the house and 1 of whom shall be
192 appointed by the house minority leader; 3 of whom shall be members of
193 the senate, 2 of whom shall be appointed by the senate president and 1 of
194 whom shall be appointed by the senate minority leader; and 6 members
195 to be appointed by the governor, 1 of whom shall be a private citizen
196 who shall serve as chair of the commission and shall not be a member of
197 any of the 106 contributory retirement systems, 2 of whom shall have
198 professional experience in employee benefits or in actuarial science, 1 of
199 whom shall be a member of the Massachusetts Municipal Association; 1
200 of whom shall be selected from a list of 3 candidates submitted by the
201 president of the Massachusetts AFL-CIO; and 1 of whom shall be a
202 member of the Retired State, County and Municipal Employees
203 Association of Massachusetts. The commission shall convene its first
204 official meeting no later than June 1, 2009.

205 The commission shall make a comprehensive study of the
206 Massachusetts contributory retirement systems. The study shall include,
207 but shall not be limited to: contribution rates paid by employers and
208 employees; vesting periods; the weight given to age versus years of
209 service in the current system; the portability of benefits in the current
210 system; cost-of-living-adjustments with special attention paid to the cost
211 of increasing the cost-of-living-adjustments base and the cost of any
212 recommendations the commission may make; current and future
213 employee pension plans and contribution structures; termination
214 allowances pursuant to section 10 of chapter 32 of the General Laws;
215 group classification systems; capping annual pension benefits; penalties
216 for pension fraud; eligibility and level of benefits for employees who
217 participate under 2 or more retirement systems; and qualifications for
218 credit for service pursuant to section 4 of said chapter 32, including
219 minimum compensation limits for officials to be eligible for credit for
220 service.

221 The public employee retirement administration commission shall
222 conduct an actuarial analysis to determine the costs of any
223 recommendations made by the commission. The commission shall file a
224 report of its study together with the actuarial analysis and
225 recommendations for legislation, if any, with the clerks of the house and
226 senate, the chairs of the house and senate committee on ways and means
227 and the chairs of the joint committee on public service no later than
228 September 1, 2009.

229 SECTION 22. Notwithstanding any general or special law to the
230 contrary, the Massachusetts Bay Transportation Authority or any
231 successor, shall enter into an agreement to establish or amend existing
232 retirement or pension benefits only if any employee hired after the
233 effective date of the agreement or amendment may not receive a
234 retirement or pension benefit prior to the completion of 25 years of
235 credited pension service and attained 55 years of age. The Massachusetts
236 Bay Transportation Authority is not prohibited by this section from
237 permitting retirement prior to attaining age 55, provided however, that
238 either: (i) the employee is entitled to a disability pension under the
239 Massachusetts Bay Transportation Authority retirement system; or (ii)
240 the employee has earned the maximum percentage allowed under the
241 retirement formula of the Massachusetts Bay Transportation Authority
242 retirement system and that the employee waives the ability to collect a
243 pension and retirement benefit due until attaining age 55.

244 SECTION 23. Section 25 of chapter 32 of the General Laws shall
245 apply to this act.

246 SECTION 24. Sections 1 and 5 shall take effect on July 1, 2009.